

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: :
: Chapter 7
ORLY GENGER, :
: Case No.: 19-13895 (JLG)
Debtor. :
:
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**DECLARATION OF ROCCO A. CAVALIERE IN SUPPORT OF CHAPTER 7
TRUSTEE'S MOTION FOR AN ORDER PURSUANT TO RULE 9019 OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (A) APPROVING
SETTLEMENT AGREEMENT AND (B) GRANTING RELATED RELIEF**

I, Rocco A. Cavaliere, hereby declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a Partner at the law firm of Tarter Krinsky & Drogin LLP, counsel to Deborah J. Piazza, the successor chapter 7 trustee of the estate of Orly Genger. I respectfully submit this Declaration in support of the *Trustee's Motion for an Order Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (A) Approving Settlement Agreement and (B) Granting Related Relief*.

2. Attached as **Exhibit 1** is a true and correct copy of a January 3, 2013 order entered in *Genger v. Genger*, Index No. 651089/2010, 966 N.Y.S.2d 346 (Sup. Ct. N.Y. County) (the “2010 Action”) at NYSCEF Doc. No. 285.

3. Attached as **Exhibit 2** is a true and correct copy of an April 8, 2016 order entered in *Genger v. Genger*, Index No. 109749/2009, (Sup. Ct. N.Y. County) (the “2009 Action”) at NYSCEF Doc. No. 1050.

4. Attached as **Exhibit 3** is a true and correct copy of the Summons and Verified Complaint, filed on July 9, 2009, in the 2009 Action.

5. Attached as **Exhibit 4** is a true and correct copy of the Affirmation in Support of Motion to Dismiss, filed on September 16, 2009, in the 2009 Action at NYSCEF Doc. No. 13.

6. Attached as **Exhibit 5** is a true and correct copy of the Summons and Verified Complaint, dated July 25, 2010, filed in the 2010 Action at NYSCEF Doc. No. 1.

7. Attached as **Exhibit 6** is a true and correct copy of the Third Amended and Supplemental Complaint, dated September 20, 2011, filed in the 2010 Action at NYSCEF Doc. No. 112.

8. Attached as **Exhibit 7** is a true and correct copy of the Verified Complaint, dated October 4, 2011, filed by Dalia Genger, as Trustee of the Orly Genger 1993 Trust, in the Court of Chancery of the State of Delaware (Case No. 6906-CS).

9. Attached as **Exhibit 8** is a true and correct copy of Plaintiff Orly Genger's Memorandum of Law in Support of Her Motion to Enjoin Defendant Dalia Genger from Prosecuting Duplicative Litigation in Delaware Chancery Court, dated October 25, 2011, and filed in the 2010 Action at NYSCEF Doc. No. 149.

10. Attached as **Exhibit 9** is a true and correct copy of an Order to Show Cause and Temporary Restraining Order, dated October 26, 2011, and entered on October 27, 2011, in the 2010 Action at NYSCEF Doc. No. 150.

11. Attached as **Exhibit 10** is a true and correct copy of an Affirmation in Response to Motion for Preliminary Injunction Against Trump Group, dated November 8, 2011, and filed in the 2010 Action at NYSCEF Doc. No. 161.

12. Attached as **Exhibit 11** is a true and correct copy of an Order to Show Cause and Temporary Restraining Order, entered in the 2010 Action on November 9, 2011, at NYSCEF Doc. No. 165.

13. Attached as **Exhibit 12** is a true and correct copy of an Order, dated April 9, 2012, and entered on April 11, 2012, in the 2010 Action at NYSCEF Doc. No. 231.

14. Attached as **Exhibit 13** is a true and correct copy of an Opinion and Order entered on June 14, 2012, in *Glenclova Inv. Co. v. Trans-Resources, Inc.*, No. 08-CV-07140-JFK (S.D.N.Y.) at ECF No. 164.

15. Attached as **Exhibit 14** is a true and correct copy of the Settlement Agreement and Release, entered into as of June 16, 2013, by and between Arie Genger and Orly Genger (in her individual capacity and in her capacity as beneficiary of the Orly Genger 1993 Trust), the Trump Group, and Arnold and David Broser.

16. Attached as **Exhibit 15** is a true and correct copy of the so-ordered Second Amended Stipulation of Discontinuance with Prejudice, entered in the 2010 Action on July 1, 2013, at NYSCEF Doc. No. 487.

17. Attached as **Exhibit 16** is a true and correct copy of the Decision and Order, dated March 20, 2014, and entered on May 13, 2014, in the 2010 Action at NYSCEF Doc. No. 925.

18. Attached as **Exhibit 17** is a true and correct copy of the Stipulation and Order of Dismissal, by and between the Trump Group, TPR Investment Associates, Inc., and Dalia Genger, as Trustee of the Orly Genger 1993 Trust, so ordered on August 30, 2013, in the Court of Chancery of the State of Delaware (Case No. 6906-CS).

19. Attached as **Exhibit 18** is a true and correct copy of the Decision and Order, dated February 19, 2019, and entered on February 20, 2019, in the 2010 Action at NYSCEF Doc. No. 1520.

20. Attached as **Exhibit 19** is a true and correct copy of excerpts of the transcript of the hearing held on January 8, 2019, in the case titled, *Sagi Genger v. Orly Genger*, in the United States District Court for the Southern District of New York (Case No. 17-cv-8181-VSB).

21. Attached as **Exhibit 20** is a true and correct copy of Recovery Effort Inc.'s Articles of Incorporation filed with the Arkansas Secretary of State on June 4, 2019.

22. Attached as **Exhibit 21** is a true and correct copy of Manhattan Safety Maine, Inc.'s Articles of Incorporation filed with the Maine Secretary of State on June 12, 2019.

23. Attached as **Exhibit 22** is a true and correct copy of the Assignment dated June 13, 2019, by and between Dalia Genger, as Sole Trustee of the Orly Genger 1993 Trust, and Dalia Genger, as Sole Director of Recovery Effort Inc.

24. Attached as **Exhibit 23** is a true and correct copy of the Inter-Creditor Agreement, dated as of June 6, 2019, by and among the Orly Genger 1993 Trust, Recovery Effort Inc., Sagi Genger, TPR Investment Associates, Inc., Manhattan Safety Company Ltd., Manhattan Safety Maine, Inc., and Emmer, Marvin & Martin LLP

25. Attached as **Exhibit 24** is a true and correct copy of the Turnover Motion, dated June 11, 2019, filed by Sagi Genger in *Sagi Genger v. Orly Genger*, in the United States District Court for the Southern District of New York (Case No. 17-cv-8181-VSB) at ECF Nos. 212-214.

26. Attached as **Exhibit 25** is a true and correct copy of the Amended Petition for Turnover of Trust Property and Other Relief, dated March 28, 2018, filed by Dalia Genger in the New York County Surrogate's Court (Index No. 2008-0017/E).

27. Attached as **Exhibit 26** is a true and correct copy of the Notice of Discontinuance, dated June 20, 2019, filed by the trustees for the Orly Genger 1993 Trust in the New York County Surrogate's Court (Index No. 2008-0017/E).

28. Attached as **Exhibit 27** is a true and correct copy of the Complaint, dated June 28, 2019, filed by Sagi Genger in *Genger v. Broser et al.*, in the United States District Court for the Southern District of New York (Case No. 19-cv-06100-VSB) at ECF No. 1.

29. Attached as **Exhibit 28** is a true and correct copy of the Order staying the case of *Genger v. Broser et al.*, in the United States District Court for the Southern District of New York (Case No. 19-cv-06100-VSB) pursuant to 11 U.S.C. § 362(a), so ordered on August 21, 2019.

30. Attached as **Exhibit 29** is a true and correct copy of the Claim No. 12 filed by the Orly Genger 1993 Trust in this chapter 7 case.

31. Attached as **Exhibit 30** is a true and correct copy of the Complaint, dated June 17, 2019, filed by Manhattan Safety Maine, Inc. and Recovery Effort, Inc., in the United States District Court for the Southern District of New York (Case No. 19-cv-5642) at ECF No. 1.

32. Attached as **Exhibit 31** is a true and correct copy of excerpts of the transcript of the hearing held on August 4, 2009, in the 2009 Action.

33. Attached as **Exhibit 32** is a true and correct copy of the Order, dated October 28, 2019, entered in *Genger v. Genger, et al.*, in the United States District Court for the Southern District of New York (Case No. 17-cv-08181-VSB) at ECF No. 230.

34. Attached as **Exhibit 33** is a true and correct copy of the Amended Petition to Designate Trustee or, in the Alternative, to Appoint a Special Trustee, and to Compel Accounting, dated February 14, 2008, filed by Orly Genger in the New York County Surrogate's Court (Index No. 2008-0017/E).

35. Attached as **Exhibit 34** is a true and correct copy of the Order, dated December 31, 2008, entered in the New York County Surrogate's Court (Index No. 2008-0017/E).

36. Attached as **Exhibit 35** is a true and correct copy of the decision, dated June 21, 2017, entered in the New York County Surrogate's Court (Index No. 2008-0017/E).

37. Attached as **Exhibit 36** is a true and correct copy of an email, dated June 30, 2013, from Thomas J. Allingham II to John Dellaportas.

38. Attached as **Exhibit 37** is a true and correct copy of the transcript of the hearing held on April 29, 2014 in the United States District Court for the Southern District of New York (Case No. 1:13-cv-08243-JFK) at ECF No. 45.

39. Attached as **Exhibit 38** is a true and correct copy of the Genger Litigation Trust Agreement, dated June 28, 2012.

40. Attached as **Exhibit 39** is a true and correct copy of Dalia Genger's Responses to Chapter 7 Trustee's Requests for Admission, dated June 17, 2020.

41. Attached as **Exhibit 40** is a true and correct copy of the transcript of the hearing held on August 1, 2013, in the Court of Chancery of the State of Delaware (Case No. 6906-CS).

42. Attached as **Exhibit 41** is a true and correct copy of excerpts of the transcript of the hearing held on August 9, 2016, in the 2009 Action.

43. Attached as **Exhibit 42** is a true and correct copy of excerpts of the transcript of the hearing held on September 6, 2007, at the American Arbitration Association, Commercial Arbitration Tribunal, in New York City (Case No. 13 170 Y 00996 07).

44. Attached as **Exhibit 43** is a true and correct copy of excerpts of the transcript of the hearing held on September 7, 2007, at the American Arbitration Association, Commercial Arbitration Tribunal, in New York City (Case No. 13 170 Y 00996 07).

45. Attached as **Exhibit 44** is a true and correct copy of the Recovery Effort, Inc.'s Responses and Objections to the Broser Defendants' First Request for Production of Documents, dated November 2, 2019.

46. Attached as **Exhibit 45** is a true and correct copy of the Manhattan Safety Maine's Responses and Objections to the Broser Defendants' First Request for Production of Documents, dated November 2, 2019.

47. Attached as **Exhibit 46** is a true and correct copy of a Decision and Order, dated on March 25, 2019, filed in the 2009 Action at NYSCEF Doc. No. 1594.

48. Attached as **Exhibit 47** is a true and correct copy of a Notice of Appeal, dated April 26, 2019, filed in the 2009 Action at NYSCEF Doc. No. 1596.

49. Attached as **Exhibit 48** is a true and correct copy of excerpts of the transcript of the hearing held on August 9, 2016, in the 2009 Action.

50. Attached as **Exhibit 49** is a true and correct copy of the Side Letter Agreement to the Stock Purchase Agreement, dated August 22, 2008.

51. Attached as **Exhibit 50** is a true and correct copy of the Stock Purchase Agreement, dated August 22, 2008.

52. Attached as **Exhibit 51** is a true and correct copy of the Order to Show Cause with Temporary Restraints, dated July 1, 2009, entered in the New York County Surrogate's Court (Index No. 2008-0017/E).

53. Attached as **Exhibit 52** is a true and correct copy of the Orly Genger 1993 Trust Instrument of Resignation of Trustee and Appointment of Successor Trustee, dated June 12, 2019.

54. Attached as **Exhibit 53** is a true and correct copy of a letter dated June 17, 2019, by The Bachman Law Firm PLLC, on behalf of Dalia Genger, regarding the 2013 Settlement Agreement with Trump Group and AG Group

55. Attached as **Exhibit 54** is a true and correct copy of certain financial records related to the \$17,257,001 of additional consideration paid in early July 2013 by a Trump Group entity.

56. Attached as **Exhibit 55** is a true and correct copy of Claim No. 5 filed by ADBG LLC in this chapter 7 case.

57. Attached as **Exhibit 56** is a true and correct copy of Claim No. 6 filed by the Genger Litigation Trust in this chapter 7 case.

58. Attached as **Exhibit 57** is a true and correct copy of Claim No. 2 filed by Arie Genger in this chapter 7 case.

59. Attached as **Exhibit 58** is a true and correct copy of documents related to the incorporation of Recovery Effort Inc.

60. Attached as **Exhibit 59** is a true and correct copy of certain ADBG LLC financial records.

61. Attached as **Exhibit 60** is a true and correct copy of Claim No. 13 filed by Kasowitz Benson Torres LLP in this chapter 7 case.

62. Attached as **Exhibit 61** is a true and correct copy of Claim No. 4 filed by Eric Herschmann in this chapter 7 case.

63. Attached as **Exhibit 62** is a true and correct copy of a wire transfer confirmation related to Eric Herschmann's payment of \$2 million to Kasowitz Benson Torres LLP.

64. Attached as **Exhibit 63** is a true and correct copy of a series of four Releases, each dated August 15, 2019, and signed by Michael Oldner, in his capacity as the trustee of The Orly Genger 1993 Trust.

65. Attached as **Exhibit 64** is a true and correct copy of 2004 Divorce Agreement between Arie Genger and Dalia Genger.

66. Attached as **Exhibit 65** is a true and correct copy of the Final Arbitration Award dated May 6, 2008, as entered in *Dalia Genger v. Arie Genger*, No. 13 170 Y 00996 07, American Arbitration Association, Commercial Arbitration Tribunal, New York City.

67. Attached as **Exhibit 66** is a true and correct copy of the 2004 Support Agreement between Sagi Genger and Dalia Genger, dated October 30, 2004.

68. Attached as **Exhibit 67** is a true and correct copy of the 2004 Indemnity between Sagi Genger and Orly Genger, dated November 10, 2004.

69. Attached as **Exhibit 68** is a true and correct copy of the Credit Agreement dated as of September 19, 2008, and the amendments thereto.

70. Attached as **Exhibit 69** is a true and correct copy of Claim No. 14 filed by Sagi Genger in this chapter 7 case.

71. Attached as **Exhibit 70** is a true and correct copy of Claim No. 9 filed by Dalia Genger in this chapter 7 case.

72. Attached as **Exhibit 71** is a true and correct copy of the Dalia Constructive Trust Action Complaint.

73. Attached as **Exhibit 72** is a true and correct copy of the Herschmann Action Complaint.

74. Attached as **Exhibit 73** is a true and correct copy of Sagi's Discharge Objection.

75. Attached as **Exhibit 74** is a true and correct copy of Dalia's Discharge Objection.

76. Attached as **Exhibit 75** is a true and correct copy of the Orly Trust Discharge Objection.

77. Attached as **Exhibit 76** is a true and correct copy of a Notice of Appeal, dated March 22, 2019, filed in the 2010 Action.

78. Attached as **Exhibit 77** is a true and correct copy of excerpts of the transcript of the deposition of David A. Parnes held on May 5, 2015, in the case titled, *Orgly Genger v. Sagi Genger*, Index No. 100697/08 (Sup. Ct. N.Y. County).

79. Attached as **Exhibit 78** is a true and correct copy of excerpts of the transcript of the deposition of Sagi Genger held on November 20, 2009, in the case titled, *Tr Investors, LLC, et al. v. Arie Genger*, in the Court of Chancery of the State of Delaware (Case No. 3994-VCS), and excerpts from the transcript of the hearings held on February 20, 2015, and March 16, 2015, in the case titled, *Orly Genger v. Sagi Genger*, Index No. 100697/08 (Sup. Ct. N.Y. County).

80. Attached as **Exhibit 79** is a true and correct copy of the Affirmation of John Dellaportas on Behalf of Sagi Genger and the Sagi Trust, in Support of an Joining Dalia Genger's Motion to Substitute and for Payment into Court, dated February 13, 2015, and filed in the 2010 Action at NYSCEF Doc. No. 1229.

81. Attached as **Exhibit 80** is a true and correct copy of the Settlement Agreement by and among, Eric Herschmann, creditor Arie Genger, Kasowitz Benson Torres LLP, interested parties David and Arnold Broser and related entities ADBG LLC and Tedco, Inc., Chapter 7 debtor Orly Lance Harris, solely in his capacity as trustee of a trust known, as the Genger Litigation Trust, and Ron Satija, Chapter 7 Trustee, filed in this chapter 7 case at ECF No. 52-1.

82. Attached as **Exhibit 81** is a true and correct copy of the Warranty Deed dated October 27, 2016.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 28, 2021

/s/Rocco A. Cavaliere
Rocco A. Cavaliere
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